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Attorneys for Defendant  
The Brachfeld Law Group P.C.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

DONNA GARCIA

Plaintiff,

vs.

RESURGENT CAPITAL SERVICES L.P.,  
LVNV FUNDING, LLC, THE  
BRACHFELD LAW GROUP, P.C. a.k.a.  
BRACHFELD & ASSOCIATES, P.C. and  
DOES 1-10,

Defendants.

Case No.: 11cv-01253 EMC

Hon. Edward M. Chen

DECLARATION OF JONATHON W.  
BIRD IN SUPPORT OF  
DEFENDANTS' JOINT OPPOSITION  
TO PLAINTIFF DONNA GARCIA'S  
MOTION FOR ATTORNEY FEES AND  
COSTS

Date: July 31, 2012  
Time: 1:30 p.m.  
Location: Courtroom No. 5  
Federal Building  
17th Floor  
450 Golden Gate Ave.  
San Francisco, CA 94102

Complaint Filed: March 15, 2011

I, Jonathon W. Birdt, declare:

1. I am an attorney licensed to practice before the courts of the State of California and I am admitted to practice before this court. I am employed by Brachfeld

1 Law Group and I am its attorney of record in this action. I have personal knowledge of  
2 the facts recited in this declaration and could competently testify thereto if called upon to  
3 do so.

4 2. From the start of this case, Plaintiff never made any effort to resolve, never  
5 made a concrete demand, and when offers were made, they were ignored. In fact,  
6 following the settlement conference with Judge Zimmerman, defendants struggled to  
7 raise the money for the settlement proposed by Judge Zimmerman, and when then did, 3  
8 weeks later, Plaintiff claimed to have incurred \$30,000 in additional fees and rejected the  
9 six figure settlement offer. It was obvious that counsel was litigating this matter to  
10 maximize fees, and not seek reasonable resolution.

11 3. Thereafter, every settlement discussion was very frustrating, every time  
12 defendants offered more money, Plaintiffs counsel would raise their demand. Had  
13 Plaintiffs counsel acted reasonably and made a good faith effort to resolve this very  
14 simple and straightforward case, it would have resolved long ago, for much less,  
15 rendering the majority of the fees claimed unreasonable for that reason alone. All  
16 counsel have an affirmative duty to ease the burden on the Court and make every effort to  
17 reach a reasonable resolution of case. The instant motion seeks more than 5 times  
18 Plaintiffs actual recovery in this matter.

19 4. From the outset, Defendant admitted to receipt of the cease and desist  
20 letters, and to the number of calls made, yet, Plaintiff went on to take additional irrelevant  
21 depositions to redundantly confirm these facts, presumably for the sole purpose of  
22 creating a fee award.

23 5. The FDCPA claims were limited by motion to one year preceding the filing  
24 of the complaint, though reading the plaintiff's moving papers, one would not be able to  
25 determine that. Time sought and expended dredging up the past for purposes of the fee  
26 claim, when such claim was limited as a matter of law to the FDCPA claims with two  
27

1 attorneys is not reasonable. This case was settled, primarily because the scope of the  
2 look back was enhanced by those other claims. Had Plaintiff only had an FDCPA claim  
3 for which she is entitled to fees, the settlement and fees sought would be 10% of that  
4 claimed.

5 6. Defendants did not dispute the calls made after a cease and desist letter, the  
6 problem with this case was twofold: Plaintiffs insistence that her history of complaints  
7 going back to 2006 were relevant to her FDCPA claim and Plaintiff counsels' complete  
8 refusal to discuss settlement. Defendants even sought to accept the mediators proposal  
9 following a settlement conference with Judge Zimmerman, but when they did, Mr.  
10 Wilcox raised the bar, as he did each time thereafter when Defendants attempted to  
11 resolve this matter.

12 7. The value of Plaintiffs claims was not the 40-50 calls she never answered, it  
13 was the risk that the state law claims would bring in prejudicial evidence going back to  
14 2006 that would bleed into the FDCPA claim.

15 8. Plaintiff identified a former Brachfeld employee, Courtney Hileman, as a  
16 man in her call log. Brachfeld identified 3 possible Courtney's employed during the  
17 relevant time frame. Plaintiffs sought only to depose a female named Courtney.

18 9. Plaintiffs counsel has not disclosed how much in fee has already been  
19 received from the contingency arrangement which should be factored in to any award.

20 10. Plaintiffs fees should be apportioned among the various claims, and at best,  
21 20% of the work performed can be attributed to the limited FDCPA claim that covered  
22 only 1 year and was not in dispute.

23 11. Counsel notes that they even attempted to resolve this fee dispute and there  
24 were several calls to discuss resolution, the first between myself and Mr. Wilcox where  
25 we discussed settlement in the \$50,000 to \$180,000 range. Mr. Wilcox called back and  
26 said Mr. Nathan wanted a multiplier and wasn't willing to reduce his fees, but if I could  
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1 send him case law he might. I conducted extensive research sending Mr. Nathan a long  
2 list of cases addressing our concerns regarding his fee claims. He called me and the  
3 number was now \$220,000 and he wanted a new demand. I suggested we would be  
4 willing to settle and might approach the \$120,000 range, but as usual, Plaintiffs number  
5 had just gone up again, instead of down. Mr. Nathan was then going to research the  
6 matter and call me back. He did and this time his demand was \$320,000 and he wanted a  
7 new number fo him. I told him of my frustration and told him we wanted to settle this  
8 claim. I told him I had authority to pay more and settle the entire matter in five minutes  
9 if he would simply make some concessions and negotiate down from the \$320,000  
10 number. He said he would speak with Mr. Wilcox and see if they wanted to get back to  
11 me. To date they have not.

12 I declare under penalty of perjury under the laws of the United States of America  
13 that the foregoing is true and correct.

14 Dated: June 21, 2012

BRACHFELD LAW GROUP P.C.

15  
16 /s/ Jon Birdt

Attorneys for Defendant Brachfeld Law Group  
P.C.